

## § 151.6

## 17 CFR Ch. I (4–1–12 Edition)

(j) *Financial distress exemption.* Upon specific request made to the Commission, the Commission may exempt a person or related persons under financial distress circumstances for a time certain from any of the requirements of this part. Financial distress circumstances are situations involving the potential default or bankruptcy of a customer of the requesting person or persons, affiliate of the requesting person or persons, or potential acquisition target of the requesting person or per-

sons. Such exemptions shall be granted by Commission order.

### § 151.6 Position visibility.

(a) *Visibility levels.* A person holding or controlling positions, separately or in combination, net long or net short, in Referenced Contracts that equal or exceed the following levels in all months or in any single month (including the spot month), shall comply with the reporting requirements of paragraphs (b) and (c) of this section:

#### (1) Visibility Levels for Metal Referenced Contracts

(i) <i>Commodity Exchange, Inc. Copper (HG)</i> .....	8,500
(ii) <i>Commodity Exchange, Inc. Gold (GC)</i> .....	30,000
(iv) <i>Commodity Exchange, Inc. Silver (SI)</i> .....	8,500
(v) <i>New York Mercantile Exchange Palladium (PA)</i> .....	1,500
(vi) <i>New York Mercantile Exchange Platinum (PL)</i> .....	2,000

#### (2) Visibility Levels for Energy Referenced Contracts

(i) <i>New York Mercantile Exchange Light Sweet Crude Oil (CL)</i> .....	50,000
(ii) <i>New York Mercantile Exchange Henry Hub Natural Gas (NG)</i> .....	50,000
(iii) <i>New York Mercantile Exchange New York Harbor Gasoline Blendstock (RB)</i> .....	10,000
(iv) <i>New York Mercantile Exchange New York Harbor No. 2 Heating Oil (HO)</i> .....	16,000

(b) *Statement of person exceeding visibility level.* Persons meeting the provisions of paragraph (a) of this section, shall submit to the Commission a 401 filing in the form and manner provided for in §151.10. The 401 filing shall contain the following information, by Referenced Contract:

(1) A list of dates, within the applicable calendar quarter, on which the person held or controlled a position that equaled or exceeded such visibility levels; and

(2) As of the first business Tuesday following the applicable calendar quarter and as of the day, within the applicable calendar quarter, in which the person held the largest net position (on an all months combined basis) in excess of the level in paragraph (a) of this section:

(i) Separately by futures, options and swaps, gross long and gross short futures equivalent positions in all months in the applicable Referenced Contract(s) (using economically rea-

sonable and analytically supported deltas) on a futures-equivalent basis; and

(ii) If applicable, by commodity referenced price, gross long and gross short uncleared swap positions in all months basis in the applicable Referenced Contract(s) futures-equivalent basis (using economically reasonable and analytically supported deltas).

(c) *404 filing.* A person that holds a position in a Referenced Contract that equals or exceeds a visibility level in a calendar quarter shall submit to the Commission a 404 filing in the form and manner provided for in §151.10, and it shall contain the information regarding such positions as described in §151.5(c) as of the first business Tuesday following the applicable calendar quarter and as of the day, within the applicable calendar quarter, in which the person held the largest net position in excess of the level in all months.

(d) *Alternative filing.* With the express written permission of the Commission or its designees, the submission of a

swaps or physical commodity portfolio summary statement spreadsheet in digital format, only insofar as the spreadsheet provides at least the same data as that required by paragraphs (b) or (c) of this section respectively may be substituted for the 401 or 404 filing respectively.

(e) *Precedence of other reporting obligations.* Reporting obligations imposed by regulations other than those contained in this section shall supersede the reporting requirements of paragraphs (b) and (c) of this section but only insofar as other reporting obligations provide at least the same data and are submitted to the Commission or its designees at least as often as the reporting requirements of paragraphs (b) and (c) of this section.

(f) *Compliance date.* The compliance date of this section shall be sixty days after the term “swap” is further defined under the Wall Street Transparency and Accountability Act of 2010. A document will be published in the FEDERAL REGISTER establishing the compliance date.

#### § 151.7 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in §151.4 shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading and to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) *Ownership of accounts generally.* For the purpose of applying the position limits set forth in §151.4, except for the ownership interest of limited partners, shareholders, members of a limited liability company, beneficiaries of a trust or similar type of pool participant in a commodity pool subject to the provisos set forth in paragraph (c) of this section or in accounts or positions in multiple pools as set forth in paragraph (d) of this section, any person holding positions in more than one account, or holding accounts or positions in which the person by power of attorney or otherwise directly or indirectly has a 10 percent or

greater ownership or equity interest, must aggregate all such accounts or positions.

(c) *Ownership by limited partners, shareholders or other pool participants.*

(1) Except as provided in paragraphs (c)(2) and (3) of this section, a person that is a limited partner, shareholder or other similar type of pool participant with an ownership or equity interest of 10 percent or greater in a pooled account or positions who is also a principal or affiliate of the operator of the pooled account must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that person, unless:

(i) The pool operator has, and enforces, written procedures to preclude the person from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(ii) The person does not have direct, day-to-day supervisory authority or control over the pool's trading decisions; and

(iii) The pool operator has complied with the requirements of paragraph (h) of this section on behalf of the person or class of persons.

(2) A commodity pool operator having ownership or equity interest of 10 percent or greater in an account or positions as a limited partner, shareholder or other similar type of pool participant must aggregate those accounts or positions with all other accounts or positions owned or controlled by the commodity pool operator.

(3) Each limited partner, shareholder, or other similar type of pool participant having an ownership or equity interest of 25 percent or greater in a commodity pool the operator of which is exempt from registration under §4.13 of this chapter must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that person.

(d) *Identical trading.* Notwithstanding any other provision of this section, for the purpose of applying the position limits set forth in §151.4, any person that holds or controls the trading of positions, by power of attorney or otherwise, in more than one account, or that holds or controls trading of accounts or positions in multiple pools